

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EDGE CAPTURE L.L.C., and EDGE
SPECIALISTS, L.L.C.,

Plaintiffs,

V.

BARCLAYS BANK PLC, BARCLAYS
CAPITAL INC., UBS AG, UBS
FINANCIAL SERVICES INC., UBS
SECURITIES, L.L.C., WOLVERINE
TRADING, L.L.C., AND WOLVERINE
EXECUTION SERVICES, L.L.C.,

Defendants.

Civil Action No. 09-CV-1521

JURY TRIAL DEMANDED

Judge Charles R. Norgle, Sr.

Magistrate Judge Denlow

PLAINTIFFS EDGE CAPTURE L.L.C.'S AND EDGE SPECIALISTS, L.L.C.'S
MOTION TO DISMISS DEFENDANT BARCLAYS' AND DEFENDANT UBS'S STATE
LAW AND INEQUITABLE CONDUCT COUNTERCLAIMS AND AFFIRMATIVE
DEFENSES

Plaintiffs Edge Capture L.L.C. and Edge Specialists, L.L.C. (collectively “Edge”) respectfully move this Court to dismiss Defendants Barclays Capital Inc.’s, UBS Financial Services Inc.’s and UBS Securities L.L.C.’s (collectively “Defendants”) state law counterclaims and counterclaim of inequitable conduct.¹

Defendants’ state law counterclaims should be dismissed under Federal Rule of Civil Procedure 12(b)(6). The counterclaims fail to provide fair notice of the claims and the grounds upon which they are based. The state law counterclaims, moreover, contain nothing beyond threadbare recitals of the elements of each cause of action. Defendants’ state law counterclaims fail to meet the minimum pleading standards required by law. *See Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

Moreover, Defendants’ inequitable conduct counterclaims must be dismissed for failure to meet the heightened pleading standards of Federal Rule of Civil Procedure 9(b). While the bare-boned allegations assert the supposed intentional withholding of prior art from the patent office during prosecution of the Edge patents, Defendants fail to plead any facts supporting the conclusory allegations, particularly the allegations of materiality and intent to deceive the U.S.P.T.O.

This Motion is based upon this Motion, the attached Notice of Motion and Memorandum of Law, the papers and pleadings on file in this action, and such other and further evidence as may subsequently be presented to the Court.

¹ The state law counterclaims asserted by Defendants Barclays Capital Inc., UBS Financial Services Inc., and UBS Securities L.L.C. are (1) common law unfair competition at Count VII, (2) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act at Count VIII, (3) misuse of confidential information at Count IX, and (4) unjust enrichment at Count X. (D.E. 148, 150-151.) Defendants Barclays Bank PLC and UBS AG did not file any counterclaims. (D.E. 149, 152.) Defendants Barclays Capital Inc., UBS Financial Services Inc., and UBS Securities L.L.C. assert inequitable conduct at Counts V and VI. All UBS and Barclays Defendants assert inequitable conduct in their affirmative defenses. (D.E. 148-152.)

Dated: May 4, 2011

Respectfully submitted,

By: /s/ Patrick G. Burns

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 4, 2011, he caused a true and correct copy of **PLAINTIFFS EDGE CAPTURE L.L.C.'S AND EDGE SPECIALISTS, L.L.C.'S MOTION TO DISMISS DEFENDANT BARCLAYS' AND DEFENDANT UBS'S STATE LAW AND INEQUITABLE CONDUCT COUNTERCLAIMS AND AFFIRMATIVE DEFENSES** to be served on the below parties through the CM/ECF system:

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/s/ Patrick G. Burns
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